

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

September 29, 2017

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Hanna Miller, Coastal Program Analyst (415/352-3616; hanna.miller@bcdc.ca.gov)

SUBJECT: Staff Recommendation on BCDC Permit Application No. 2014.005.01 (Material Amendment No. One), East Bay Regional Park District's Albany Beach Restoration and Public Access Project (Phases 2 and 3)
(For Commission consideration on October 5, 2017)

Recommendation Summary

The Commission staff recommends approval, as conditioned herein, of Material Amendment No. One to BCDC Permit No. 2014.005.01 for the East Bay Regional Park District's (EBRPD) implementation of the Albany Beach Restoration and Public Access Project (Phases 2 and 3), in the City of Albany, Alameda County, which will result in:

1. Construction of an approximately 4,361-foot-long (0.83-mile), 12- to 14-foot-wide San Francisco Bay Trail, including a 200-foot-long bridge element with overlooks, located between Buchanan and Gilman Streets;
2. Expansion of a recreational beach (by 5,200 square feet), installation of universally-accessible beach mats, and the redesign of beach and park entrance areas;
3. Installation or improvement of site amenities, including a bathroom, interpretive panels, shoreline riprap, vehicle parking, and fenced areas supporting dune, seasonal wetland, and other non-tidal habitat; and
4. Creation of a 9,930-square-foot upland area for general park use, including by board sailors.

The project will result a total of approximately 332,750 square feet (7.64 acres) of new or enhanced public area (including areas outside of the Commission's jurisdiction). Project construction is scheduled to commence in May 2018 and be completed in 2022.

Note to Recommendation

Because the project is the subject of a material amendment to an existing Commission permit, the format of the recommendation is different from recommendations for new applications. This recommendation includes language of the existing permit and the changes specific to the subject material amendment. Any deleted existing permit language is ~~struck through~~; added or new language is underlined. Existing language neither struck through nor underlined remains unchanged with the adoption of Material Amendment No. One.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. **Project.** Subject to the conditions stated below, the East Bay Regional Park District (EBRPD) is hereby granted permission to conduct activities, identified below, in the Bay and within the 100-foot shoreline band as part of a three-phase project: Phase 1 of the “Albany Beach Restoration and Public Access Project”, along the Albany “Neck,” and Phases 2 and 3 (Material Amendment No. One) at the Albany Beach and between Buchanan Street and Gilman Street, within and adjacent to the Eastshore State Park, at within an area ~~a site~~ designated as a “waterfront park/beach” priority use area designated on the San Francisco Bay Plan Map No. 4 5, at the end of Buchanan Street, in the Cities of Albany and Berkeley, Alameda County.

~~Authorized work includes the following:~~

In the Bay (Phase I):

1. Install, use and maintain, in-kind, a 1,800 linear-foot, 72,716-square-foot (1.67 acres) shoreline revetment along the southern shoreline of the Albany “Neck” by doing the following:
 - a. Remove 1,712 cubic yards of un-engineered concrete, rock and debris from an approximately 18,211-square-foot (0.42 acre) portion of the Bay currently acting to protect the shoreline; and
 - b. Place approximately 2,100 cubic yards of engineered rock to construct a 15,769-square-foot (0.36 acre) portion of the revetment; and
2. Place fill to create and maintain the following habitat features: (a) 250 cubic yards of pebble rock to create a 2,000-square-foot (0.05 acre) beach; (b) 325 cubic yards of rock to create three bird roosting islands covering a total of 5,800 square feet (0.13 acre); (c) 425 cubic yards of rock and oyster shell to create a 3,500-square-foot (0.08 acre) crescent-shaped reef for oyster recruitment; (d) 50 cubic yards of rock to create four porous tide pools, covering 300 square feet (0.01 acre); and (e) 500 cubic

yards of rock to create a 2,100-square-foot (0.05 acre) groin/rock headland that will extend bayward from the shoreline. A total of 13,700 square feet (0.31 acre) of fill will be placed to create these habitats.

Within the 100-foot shoreline band (Phases 1, 2, and 3):

1. Install, use and maintain, in-kind, a 1,800 linear-foot, 72,716-square-foot (1.67 acres) upland portion of the shoreline revetment along the southern shoreline of the Albany "Neck" by removing 8,391 cubic yards of unengineered concrete and debris from 50,902 square feet (1.17 acre) of the shoreline, and installing, using, and maintaining, in-kind, the upland portion of the shoreline revetment covering approximately 56,947 square feet (1.31 acres) of the shoreline;
2. Repair, extend and improve an existing 2,490-linear foot public access trail along the Albany "Neck" by doing the following:
 - a. Remove debris (broken concrete, asphalt and rubble) from and adjacent to the existing trail;
 - b. Reconstruct the trail by relocating the trail approximately five feet (on average) to the north (away from the Bay) to accommodate a shoreline planting area, provide a consistent path width of 14 to 16 feet, resurface the trail with a semi-permeable material, construct a 44-foot-long trail to provide a direct connection from the Bay Trail spur to Albany Beach, and make all trails ADA-compliant;
 - c. Install and maintain a 25- to 30-foot-wide, 2,065-foot-long shoreline planting area adjacent to the southern-edge of the trail to create habitat and aid in minimizing potential effects of public access use of the trail on wildlife; ~~and~~
 - d. Install, use and remove, upon completion of construction activities, the following: (1) a 129,000-square-foot (2.96 acre) construction staging area, of which 17,000 square feet (0.39 acre) will be in the Commission's jurisdiction in the Albany "Plateau"; and (2) a five- to eight-foot-wide, 1,800-foot-long temporary pedestrian pathway near the center of the "neck" to allow continued public access to the park during construction activities;
3. As part of Phases 2 and 3 (Material Amendment No. One):
 - a. Remove a 20,000-square-foot portion of a vehicle parking area;
 - b. Construct, use, and maintain in-kind an approximately 4,361-foot-long (0.83 miles), 12- to 14-foot-wide paved San Francisco Bay Trail with-shoulders measuring up to 5 feet wide, a 200-foot-long 12-foot-wide bridge structure, including placement of approximately 330 cubic yards (cy) of material to raise existing grades and the development of two overlooks (with seating) at an approximately 970-square-foot area (North Fleming Point) and an approximately 250-square-foot area (South Fleming Point);

- c. Place, use, and maintain in-kind approximately 1,095 cy of sand and soil to improve and expand a recreational beach by approximately 5,200 square feet, and install, use, and maintain in-kind two approximately 500-square-foot universally-accessible mats at the north and south beach areas;
 - d. Establish, use, and maintain in-kind an approximately 1,670-square-foot area with sand dunes, a seasonal wetland, and a “rain garden” with an approximately 200-foot-long, 4-foot-high perimeter fence with three gates;
 - e. Construct, use, and maintain in-kind an approximately 9,930-square-foot (0.2-acre) portion of an open use area for park visitors; and
 - f. Install, use, and maintain in-kind park infrastructure, including: an approximately 130-foot-long section of an 18-inch-high sand wall; 28 outfalls measuring four inches diameter except one 24-inch-diameter outfall; approximately 350 cy of rock riprap material within an approximately 2,200-square-foot area; and a minimum of three traffic signs.
- B. **Application Dates.** This amended authority is generally pursuant to and limited by the ~~permittees’ original~~ application dated July 3, 2014, and the application dated May 5, 2017, requesting Material Amendment No. One, including all accompanying and subsequent correspondence and exhibits, but subject to the modifications required by conditions hereto.
- C. **Deadlines for Commencing and Completing Authorized Work.** Construction activities authorized ~~herein~~ in the original authorization ~~must~~ was to commence prior to December 31, 2015, or ~~this the original permit will~~ would lapse and become null and void. All construction work authorized ~~herein~~ in the original authorization ~~must~~ was to be diligently pursued to completion and completed within two years of project commencement or by December 31, 2017, whichever ~~is~~ was earlier, unless an extension of time ~~is~~ was granted by amendment of the permit. All in-kind maintenance authorized herein, including in Material Amendment No. One, is allowed as long as activities and uses authorized herein remain in place and as long as relevant title documents, including leases, are valid.
- The project authorized in Material Amendment No. One must commence by November 1, 2020 and must be diligently pursued to completion within two years of commencement or no later than November 1, 2022, whichever occurs first, unless an extension of time is sought from the Commission by the permittee and granted through further amendment of this permit.
- D. **Project Summary.** The original project will result in permit allowed the removal of 69,113 square feet of failing shoreline revetment, of which 18,211 square feet is located in the Bay, and installation of a 72,716-square-foot engineered revetment, of which 15,769 square feet will be located in the Bay. There will be an overall decrease in Bay fill of 2,442 square feet as a result of the revetment reconstruction. Five habitat features will be installed with the project that will cover 13,700 square feet of the Bay and will

provide habitat for a variety of aquatic organisms and wildlife. Public access provided with the project consists of reconstructing an existing 2,490-foot-long public access trail by shifting the trail location slightly north (away from the Bay) and narrowing its width to 14- to 16-feet to provide an adjacent 30-foot-wide planting area. The reconstructed trail will be re-graded to provide a smooth and even surface and will be repaved with a semi-permeable material. An additional six-foot-wide, 44-foot-long trail extension will be installed at the eastern end of the existing trail that will provide direct access to Albany Beach. All public access improvements will comply with ADA-requirements. The project will provide a total of 99,564 square feet of new and/or improved public access (37,614 square feet of pathways and 61,950 square feet of planting area).

The project, which is the subject of Material Amendment No. One to the permit, will not involve work in the Commission's Bay jurisdiction. All work is located within the Commission's 100-foot shoreline band jurisdiction and within a waterfront park/beach priority use area designated in the Bay Plan. The project is designed in its entirety to improve and enhance public-serving amenities, including the San Francisco Bay Trail, at and in the vicinity of an existing shoreline park.

II. Special Conditions

The amended authorization made herein shall be subject to the following special conditions, in addition to the Standard Conditions in Part IV:

A. Plan Review and Approval

1. **Construction in Accord with Plans** (Original Permit, Phase 1)

- a. The project constructed pursuant to ~~this~~ the original permit shall generally conform with the plans entitled "Albany Beach Public Access and Restoration Phase 1" revised through dated August 8, 2014, and prepared by Questa Engineering Corporation, and all accompanying and subsequent correspondence and exhibits. Final project plans shall be prepared and submitted for staff review and approval by or on behalf of the Commission, as described below.

2. **Plan Review.** No work authorized herein shall commence until final site plans, including for demolition, grading, staging, construction, engineering, and landscaping activities authorized herein, have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. Specific drawings and information required in such plans shall be discussed and determined in coordination with Commission staff prior to submittal. To save time, preliminary drawings should be submitted and reviewed prior to submittal of final drawings. The plans shall be accompanied by a letter requesting plan review and approval and identifying the type of plans. At a minimum, plans shall include: the shoreline (Mean High Water (MHW)), the 100-foot line inland of MHW, property lines, the boundaries of areas to be reserved for public access, and the location, dimensions, and materials of all elements of the project authorized herein. All plan review shall be completed by or on behalf of the Commission within 45 days after receipt of such plans.

- a. **Shoreline Revetment.** The revetment plans shall consist of diagrams and cross-sections that: (1) show and clearly label the MHW referenced to ~~NGVD29~~ or NAVD 88, property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used; (2) indicate the source of all materials to be used; and (3) identify who designed the shoreline protection improvements and their background in coastal engineering.

Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conform to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd-shaped pieces of concrete, and asphalt concrete as riprap is prohibited, unless designed as part of the revetment to provide habitat.

Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical) unless the revetment is keyed at the toe. The revetment slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site. The revetment shall be constructed in a manner that approximately matches the grade at the adjacent properties to provide a gradual transition between these shoreline features and, at a later date, facilitate integration of these features.

3. **Plan Approval.** Plan approval or disapproval shall be based upon: (a) completeness and accuracy of the plans in showing features authorized herein; (b) consistency of the plans with the terms and conditions of this permit; (c) assurance that any Bay fill does not exceed this authorization and any work within the 100-foot shoreline band conforms with public access improvements authorized or required herein; (d) the appropriateness of the types of fill material and their manner of placement; (e) the preparation of the plans by professionals and their official stamp of or certification of approval; and (f) assurance that appropriate provisions have been incorporated for safety in case of a seismic or future flooding event.
4. **Conformity with Final Approved Plans.** Prior to commencement of any work authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization will be performed in accordance with the approved design criteria and in substantial conformance with the approved plans. All improvements constructed pursuant to this permit shall conform to the final approved plans. No changes shall be made

thereafter to any final plans or to the constructed shoreline protection improvements without first obtaining written approval of the change(s) by or on behalf of the Commission.

5. **Discrepancies Between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and special conditions of this authorization, the Special Condition shall prevail. The permittee are responsible for assuring that all plans accurately and fully reflect the special conditions of this authorization.
6. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittee or any other interested party to the Design Review Board or, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include the specific reasons for appeal. The Design Review Board shall hold a public hearing and act on the appeal within 60 days of the receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.

B. Construction in Accord with Plans (Material Amendment No. One, Phases 2 and 3)

1. **Construction Documents.** The improvements authorized herein shall be built generally in conformance with the following document: Albany Beach Restoration and Public Access Improvements Project (Phases 2 &3), dated July 27, 2017, prepared by Questa Engineering Corporation, and all accompanying and subsequent correspondence and exhibits. The permittee is responsible for assuring that all construction documents accurately and fully reflect the terms and conditions of this amended permit. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.
2. **Construction Document(s) Review and Approval.** No work whatsoever shall commence pursuant to this amended permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 45 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. If final construction document review is not completed by or on behalf of the Commission within the 45-day period, the permittee may carry out the project authorized herein in a manner consistent with the plans referred to in this special condition.
 - a. **Document Details.** All construction documents shall be labeled with: the Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public

access areas and view corridor(s) required herein. Documents for shoreline protection projects must be dated and include the preparer's certification of project safety and contact information. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.

3. **Conformity with Final Approved Documents.** All authorized improvements and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.
4. **Discrepancies between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions of this amended permit or legal instruments, the special condition shall prevail.
5. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the amended permit and/or consultation with the Commission Design Review Board.

BC. Public Access (Phase 1, Original Permit)

1. **Improvements.** The public access improvements generally depicted on Exhibit A shall be completed and available for public access use by January 1, 2016. The public access improvements shall be consistent with the plans approved pursuant to Special Condition II.A of this authorization and substantially conform to the plans entitled, "Albany Beach Public Access and Restoration Phase 1," revised through dated August 8, 2014, and prepared by Questa Engineering Corporation. These improvements include the following:
 - a. A 2,490-foot-long, 14- to 16-foot-wide public access pathway that shall be ADA-compliant and surfaced with a natural appearing surface treatment with low maintenance and high durability characteristics;
 - b. A 2,065-foot-long, 25-30-foot-wide shoreline planting area that shall run parallel to the shoreline pathway and be hydro-seeded with plant seeds native to the Bay area (e.g., marsh gumplant, California poppy, blue-eyed grass, etc.);

- c. A 44-foot-long, 6-foot-wide pathway “extension” or connector trail that shall extend from the eastern end of the shoreline pathway (above) to Albany Beach. The pathway “extension” shall be ADA-compliant and surfaced with a surface material that is durable and can withstand environmental conditions at the site; and
 - d. At least two public access signs, including one at the entrance to the spur trail and one wayfinding sign showing various trails available to park users.
- 2. **Use.** Until this permit is revoked, or otherwise modified by or on behalf of the Commission, the permittee shall construct, hold and maintain the 2,490-foot-long, 14- to 16-foot-wide reconstructed shoreline pathway and the 44-foot-long, 6-foot-wide pathway extension, as generally shown on Exhibit A, open to the public for access to the shoreline of San Francisco Bay and to the Bay itself for viewing, fishing, walking, picnicking, sitting, bicycling, and related purposes. The exact configuration of the public access areas shall be delineated on plans to be submitted to, and approved by or on behalf of the Commission pursuant to Special Condition II-A, herein.
- 3. **Maintenance.**
 - a. The public access areas and improvements authorized and required herein shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any landscaped materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, trash receptacles, overlooks, and art; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site; and
 - b. To ensure that views to the Bay are achieved from the public access area, all plantings adjacent to the shoreline pathway shall be kept to a height of four feet or lower.
- 4. **Assignment of Maintenance Responsibility.** Prior to assigning any portion of this permit, the permittee shall transfer maintenance responsibility of the public access area authorized and required herein to a public agency or other party acceptable to the Commission but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit. If the permittee proposes to establish an entity that has a membership, such as a homeowners’ association, the instrument shall also: (a) establish the authority of the entity to impose charges on its members to assure that the entity has sufficient financial resources to maintain all of the public access improvements and landscaping; (b) provide that the entity has the legal authority to take any and all actions necessary to maintain all of the public access improvements and

landscaping; (c) provide that each and every member is jointly and severally responsible with each and every other member to maintain all of the public access improvements and landscaping pursuant to this permit; (d) provide that the Commission may serve all notices, including notices on any members, on the entity only; and (e) provide that the entity has the authority to accept a partial assignment of the amended permit for the purposes described above.

5. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved in writing by or on behalf of the Commission upon a finding that the proposed rules will not significantly affect the public nature of the area, will not unduly interfere with reasonable public use of the public access areas, and will tend to correct a specific problem that the permittee has identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
6. **Required Public Access and Site Flooding.** The permittee shall implement strategies to ensure that the public access areas required herein are either protected against or resilient to future flooding and/or sea level rise. In the event that adaptation strategies to assure resilience and/or protection from tidal flooding will result in a significant visual or physical impact at the required public access areas so as to result in a decrease in area or impact the public's ability to use such areas and view the Bay, the permittee shall coordinate with the Commission staff to prepare an alternative public access plan and obtain the necessary authorization by or on behalf of the Commission to ensure the creation of equivalent public access associated with the project authorized herein.
7. **Public Access and Wildlife Compatibility.** By March 31 of every year, as part of the monitoring report through 2020, and in a brief letter thereafter, the permittee shall report on conflicts between public access use and adjacent wildlife habitat, and assess whether there are opportunities to reduce such conflicts. If conflicts are detected, the permittee shall propose and obtain Commission approval, if deemed necessary by Commission staff, to implement strategies (e.g., post and cable fencing, etc.) to reduce potential conflicts.

D. Public Access (Material Amendment No. One, Phases 2 and 3)

1. **Area.** The permittee shall make an approximately 329,600-square-foot (7.57-acre) area, as generally shown on Exhibits B and C, exclusively available to the public for unencumbered access purposes. No other uses unless specified and/or authorized herein shall be allowed in said area without prior written approval by or on behalf of the Commission.

The required public access is described as: new or improved area measuring approximately 193,400 square feet (4.44 acres) within the Commission's 100-foot shoreline band jurisdiction, and new or improved area measuring approximately 136,200 square feet (3.13 acres) located outside of the Commission's jurisdiction.

- 2. Improvements.** Upon completion of the project authorized herein (Material Amendment No. One), the permittee shall have installed and, thus, make available for public use the following improvements, generally shown on Exhibits B and C and illustrated on plans entitled “Albany Beach Restoration and Public Access Improvements Project (Phases 2 & 3),” dated July 27, 2017, prepared by Questa Engineering Corporation:
- a. A 4,985-foot-long, 12- to 14-foot-wide paved path, with shoulders measuring up to 5 feet wide, located between Buchanan and Gilman Streets with two over-looks (and seating) at an approximately 970-square-foot area (North Fleming Point) and an approximately 250-square-foot area (South Fleming Point) and sloped edge to maintain access to two fishing peninsulas for as long as the peninsulas are accessible and not flooded;
 - b. An approximately 31,475-square-foot (0.95-acre) open use area available to all park users;
 - c. An approximately 9,900-square-foot (0.23-acre) beach expansion;
 - d. A 20-vehicle parking lot and approximately 26 bicycle parking spaces;
 - e. A vaulted toilet restroom, two picnic tables, and two universally-accessible beach mats;
 - f. An approximately 420-foot-long, 5-foot-wide spur trail at the northern end of the San Francisco Bay Trail leading to the beach;
 - g. A 36-foot-diameter beach entrance with interpretive panels and a seatwall at the southern beach area; and
 - h. A minimum of: three signs with information to reduce conflicts between various site users (vehicles, pedestrians, cyclists, board sailors, etc.); one sign informing the public about the park’s shoreline amenities, including one public parking sign; two Bay Trail and one Water Trail signs; and two signs intended to educate the community on potential flood conditions at the site.
- 3. Maintenance.** The permittee shall permanently maintain and/or repair or replace at its expense all public access improvements and areas required herein including, but not limited to: path surfaces, including the approximately 4,985-foot-long San Francisco Bay Trail; signage; seating; entry facilities and areas; parking lot; landscaping; bathroom; and universally-accessible beach mats. The permittee shall conduct periodic cleanup of debris and trash and remove encroachments into public areas required herein. At the 0.95-acre open use area required herein, the permittee shall maintain landscaping so that it does not exceed two feet in height in order to facilitate use by the public, such as for kite surfer layout activities. In addition, the permittee shall repair damage to public improvements and areas required herein caused by or related to future flooding.

If any portion of the required public access area located in the Commission's jurisdiction is subject to flooding that results in a closure of any area, the permittee shall submit to the Commission a written report within six (6) months after the closure of the public access area with documentation of: the date of the closure and duration; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., Bay overtopping of shoreline or stormwater backup or overland flow); and the resulting damage or cleanup; and illustrative photographs with site details. No permanent restrictions or closures of required public access areas may take place without additional approval by or on behalf of the Commission, and the permittee shall identify equivalent public access to ensure public access to and along the shoreline in the event of permanent restrictions or closures contingent in part on the Commission's review and approval of such a project and/or special condition modification.

Within 30 days after notification by Commission staff, the permittee shall correct any maintenance deficiencies determined necessary to remain in compliance with this amended permit. In the event that the permittee assigns this amended permit to a new party, the assignee shall be bound by the maintenance terms and conditions in this amended permit.

The permittee may impose reasonable rules and restrictions for the use of public access areas required herein to correct problems that may arise. Such rules and restrictions, including restricting hours of use and delineating appropriate behavior, shall be first approved by or on behalf of the Commission in writing based on a finding that the proposed limitations would not significantly affect the public nature of the area, unduly interfere with reasonable public use of the public access areas, and are intended to correct the subject problem.

4. **Signage Plan Review.** The permittee shall prepare a description of type, size, language, and location to be included on any public signage required in Special Condition II.C.2 and provide to the Commission staff by November 1, 2018. Within 45 days of receipt, the Commission staff shall respond in writing to the proposed signage plan. All signs shall be placed at the project site upon completion of the project authorized herein.
5. **Fencing.** All fencing authorized herein shall allow public viewing of protected or exclusive areas. Opaque fencing material is prohibited.
6. **San Francisco Bay Trail Relocation.** In the event that an approximately 920-linear-foot and/or a 1,763-foot-long section of the Bay Trail (totaling 2,685 linear feet, as required herein) is necessary to relocate at a future date, the permittee shall ensure that any trail realignment would provide continuous shoreline access, in part, by connecting to the other sections of the Bay Trail authorized and required herein. At least 180 days prior to any planned commencement and construction of trail realignment activity, the permittee shall seek and receive an amendment to this permit for the subject project and/or special condition modification. In the event

that the permittee does not acquire the 2.88-acre parcel at the beach area, the permittee shall apply for an amendment to this permit with an alternative proposal of access.

7. **Flooding and Sea Level Rise.** Of the approximately 4,985-foot-long San Francisco Bay Trail authorized and required herein, an approximately 2,685-linear-foot section is low-lying and not resilient to future flooding.

By November 1, 2032 or ten years following completion of project construction, whichever is earlier, the permittee shall submit to the Commission for its review and consideration a sea level rise and flooding adaptation plan for the 2,685-foot-long portion of the San Francisco Bay Trail and the beach area authorized and required herein. The adaptation plan shall analyze how the public access improvements required herein, including the recreational beach and Bay Trail, have responded to significant flooding events and, if appropriate and necessary, adaptation techniques for any areas experiencing significant inundation and consequent damage or sustained public closures. If the permittee does not propose a feasible adaptation strategy, by November 1, 2033, it shall prepare and propose for the Commission's review and consideration a public access amenity, which is equivalent in size, scope, and purpose to any access required herein that is no longer sustainable or can remain useable by the public due to existing and/or anticipated flooding. Any resulting modifications to the authorized and/or required public access amenities as described in this amended permit may be the subject of a subsequent permit amendment. The permittee shall notify the Commission of flooding events in the annual maintenance reports required in Special Condition II.D.3.

- €E. **Monitoring Plan and Program (Original Permit, Phase 1).** By March 31, 2015, the permittee shall submit and receive approval, by or on behalf of the Commission, of a monitoring plan that shall contain measures to assess whether the habitat features are persisting or being reshaped by natural forces, and are providing benefits for target species. The monitoring plan and program shall contain the following:

1. **Habitat Features.** A schedule for the submittal of monitoring reports shall be provided that encompasses a 5-year monitoring period, with monitoring events occurring each year following construction completion for a total of 5 monitoring events. The monitoring reports shall provide information on how the created habitats are persisting or being reshaped by natural forces, the success of the habitat features in providing habitat for target wildlife species, specifically information on the use of the habitat features by target animal species including bird use, oyster density, fish species presence or absence, evidence of predation, and any other anecdotal information that bears on the success of this program in providing the target habitat(s). The monitoring plan shall outline measures that will be employed, if any, if it is determined that the features are not providing the anticipated habitat benefits.

- DF. Minimizing Impacts to Natural Resources** (Original Permit, Phase 1). All construction activities in the Bay authorized herein shall comply with the restrictions contained in the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) Endangered Species Act (ESA) Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation Management Act Essential Fish Habitat Response for the project, dated February 4, 2014, 2014. These measures to minimize disturbance to special-status species include: (i) all in-water construction activities shall be limited to June 1st through November 1st of any year to avoid impacts to migrating salmonids; (ii) all in-water work shall be conducted at low tide; and (iii) debris booms and silt curtains shall be used during construction activities. In addition, to reduce potential impacts to existing eelgrass beds, the permittee shall perform a pre-construction survey to determine the extent of the eelgrass bed; establish a work-exclusion zone a minimum of 10 feet from an adjacent eelgrass bed during all in-water construction activities; and perform a post-construction survey of the eelgrass bed. If impacts to eelgrass are detected, the permittee shall propose and implement mitigation, subject to approval, by or on behalf of the Commission.
- EG. Water Quality Certification** (Original Permit, Phase 1). All construction activities in the Bay authorized herein shall comply with the requirements of the water quality certification dated May 7, 2014, issued by the California Regional Water Quality Control Board, San Francisco Bay Region, including the preparation of a Storm Water Pollution Prevention Plan (SWPPP), the use of silt fences, construction booms and straw wattles during construction and the restriction of in-water work to low tide events.
- FH. Shoreline Revetment Maintenance.** The shoreline revetment authorized herein shall be regularly maintained by and at the expense of the permittee, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Revetment maintenance activities shall not result an increase Bay fill at the site. Within 30 days after notification by the staff of the Commission, the permittee or any successor or assignee shall correct any maintenance deficiency noted by the staff.
- I. Temporary Structures.** Any construction-related infrastructure installed temporarily for project construction shall be fully removed to a location outside of the Commission's jurisdiction and/or in manner as shown on construction drawings reviewed and approved by or on behalf of the Commission per Special Condition II.A.

III. Findings and Declarations

This amended authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

- A. **Use.** The project, which is the subject of the original permit, is located within a “waterfront park/beach” priority use area on Bay Plan Map No. 5. All of the ~~proposed~~ uses are consistent with this designation in that they will assure that the landfill debris that makes up the substructure of the park will remain contained and isolated from the Bay and public using the park, that habitat will be enhanced, enriching visitors experience, and that public access will be improved with the addition of landscaping and an ADA-compliant path surface.
- B. **Bay Fill.** The Commission may authorize fill when the proposed fill complies with the requirements of Section 66605 of the McAteer-Petris Act, including: (a) the public benefits of the fill exceed the public detriment from the loss of water area, and the fill is limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation, and public assembly, water intake and discharge lines for desalinization plants and power generating plants requiring large amounts of water for cooling purposes or is “minor” to improve shoreline appearance or public access; (b) no alternative upland location exists for the fill and the fill is the minimum amount necessary; (c) the fill minimizes harmful effects to the bay area, including water quality and fertility of fish and wildlife resources; (d) the applicants have valid title to the property proposed to be filled; and (e) the fill will be constructed in accordance with sound safety standards and afford reasonable protection against the hazards of unstable geologic conditions or flooding.

The project, which is the subject of the original permit, will involve the removal of approximately 1,712 cubic yards of unengineered concrete, rock and debris covering an 18,211-square-foot (0.42 acre) area of the Bay, and the placement of 2,100 cubic yards of rock covering approximately 15,769 square feet (0.36 acres) of Bay surface within roughly the same footprint to provide an engineered revetment system.

In addition, the project includes placing approximately 1,550 cubic yards of rock and oyster shell covering 13,700 square feet of Bay surface to create a series of habitats such as bird roosting islands, a pebble beach, an oyster reef, and shorebird foraging areas. Portions of these habitat features will be below Mean High Water after fill placement, and will continue to remain in the Bay.

- **Public Benefit.** The existing shoreline consists of un-engineered construction debris placed over a 50-year period and that provides a measure of shoreline protection. The site was a former landfill that was closed in December 1989 and governed by Regional Water Quality Control Board Order No. 98-072. Continued erosion of the shoreline has exposed landfill debris to bay water. The existing loosely constructed revetment ranges in height from approximately 9 feet to 15 feet NAVD 88. Along most of its length, the revetment ranges in elevation from 12 feet to 14 feet NAVD88.

The goals for the redesigned revetment include halting further erosion of the landfill materials and constructing a shoreline protection system that will be resilient to the current 100-year flood elevation at the site (9.2 feet NAVD 88) and the projected 100-year flood elevation at 2050 with a projected 12 inches of sea level rise (10.2 feet NAVD 88). The expected design life of the structure is approximately 35 years.

The permittee retained Coast and Harbor, Inc., to perform a coastal engineering analysis for the project. Coast and Harbor, Inc. determined that building the revetment to an elevation of 12 feet NAVD 88 will protect the shoreline from current and projected 2050 100-year flood elevations. The permittee, in coordination with the RWQCB, evaluated a number of design options for the revetment. The public benefits of the selected revetment include limited Bay-exposure of landfill debris during construction, long-term containment of the debris in accord with the RWQCB landfill closure order for the site, and a reduction in the amount of fill over the existing revetment.

The habitat features that will be constructed with the project will enhance existing subtidal and tidal habitats at the site and will provide increased foraging habitat for shorebirds, both public benefits.

- **Water Oriented Use.** While not explicitly defined as a “water-oriented use” in the McAteer-Petris Act, shoreline protection systems (e.g., rip rap, flood walls, etc.) have been authorized by the Commission in numerous projects around the Bay and have been found to be water-oriented. The San Francisco Bay Plan contains an entire section of Findings and Policies on Shoreline Protection in the Bay. Finding (b) of the Shoreline Protection section of the Bay Plan states, “Most structural shoreline protection projects involve some fill....”

In addition to fill for the revetment, the project, which is the subject of the original permit, will result in the placement of some fill to enhance existing habitat by creating habitat features such as bird roosting islands, a pebble beach, and an oyster reef. The project site is not designated a “wildlife refuge,” (a water-oriented use defined in the McAteer-Petris Act), but in the past, the Commission has authorized some fill to create or enhance wildlife habitat in areas not designated as a wildlife refuge. For example: (1) BCDC Permit No. M2012.016 authorized the California State Coastal Conservancy to create California Ridgway’s rail refuge islands totaling 5,760 square feet of fill at various marsh locations around the Bay, including some areas not within designated wildlife refuges; and (2) BCDC Permit No. M2010.032 authorized the Richardson Bay Audubon Center and Sanctuary and the Marin County Department of Parks and Open Space to place sand, gravel, rock and oyster shell over a 2.17-acre area to provide habitat for native oysters, foster beach replenishment, and create foraging habitat for shorebirds in Marin County near Mill Valley. In a designated wildlife refuge, the Commission recently concurred with the U.S. Fish and Wildlife Service that the placement of 31,565 cubic yards of material over 15 acres to enhance tidal marsh habitat and provide upland refugia at Sonoma Creek, in the San Pablo Bay National Wildlife Refuge, Sonoma County was consistent with its

laws and policies (C2014.004.00). To ensure that the habitat features will provide the anticipated benefits, and assure that the project is consistent with the Bay Plan policies on natural resources which require restoration projects be monitored to assure project sustainability, Special Condition II-CE has been included in this authorization requiring the permittee to monitor the habitat annually, for a period of five years following construction. A monitoring duration of five years was determined to be appropriate based on the relatively small size of all the restored habitats, and the expected rapid colonization and use of the restored features by native species.

- **Minor Fill for Improving Shoreline Appearance.** The current appearance of this regional park's shoreline is degraded and unsightly, with large pieces of concrete construction debris and exposed rebar in several locations. The new revetment system, which is the subject of the original permit, has been designed to provide a cohesive and uniform appearance, while minimizing erosion of the shoreline. In addition, by replacing the existing revetment, the public access trail along the "Neck" will be protected from continued erosion and rising sea levels, at least through 2050. The design of the revetment will also provide a more natural, irregular shoreline appearance, in contrast to present, linear conditions.
- **Upland Alternative.** The revetment, which is the subject of the original permit, is designed to provide shoreline protection from wave action and erosion, and contain landfill debris that has been placed in areas that once were Bay. The sole purpose of the fill placed to create habitat features is to enhance existing tidal and subtidal habitats. Thus, by the very nature of these activities, there is no upland alternative location for the revetment and habitat features.
- **Minimizing Harmful Effects.** Several measures will be employed during construction to ensure that the fill associated with the project, which is the subject of the original permit, is placed in a manner that minimizes harmful effects to the Bay. To ensure that the adjacent eelgrass bed is not affected during construction, a pre-construction eelgrass survey will be conducted to establish the extent of eelgrass present on site, a debris boom will be installed a minimum of 10 feet from an eelgrass bed to limit the migration of construction debris into the bed, and a post-construction eelgrass survey will be conducted to assess whether the eelgrass bed has been affected by construction activities. In addition, a Storm Water Pollution and Prevention Plan (SWPPP) will be prepared and implemented, in accord with Regional Water Quality and Control Board Water Quality Certification for the project dated May 7, 2014, to ensure that water quality and sensitive Bay resources are protected. (The measures that will be employed to minimize impacts to Bay water quality are more fully discussed in Section 5 on Water Quality, below).

On February 4, 2014, the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) issued a "Concurrence Letter", in accord with the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act for the project. While the letter states that the project is

not likely to have an adverse effect on ESA-listed species or critical habitat for ESA-listed species, there is the potential for adverse effects on essential fish habitat (EFH), due to degradation of water quality and disturbance of benthic organisms during construction. The February 4, 2014 “Concurrence Letter” goes on to state that effects to EFH will be minimized due to the implementation of the best management practices and avoidance measures proposed by the permittee, including limiting in-water construction activities to June 1st through November 1 to avoid migrating salmonids, conducting all in-water work at low tide, and using debris booms and silt curtains during construction. NMFS found that while the project will result in temporary degradation to EFH during construction, that implementation of the project will result in a long-term benefit to EFH through the removal of debris and rubble and the creation of subtidal habitats. (The potential project effects on Bay natural resources are more fully discussed in Section 4 on Natural Resources, below).

- **Valid Title.** As previously stated, the project site, which is the subject of the original permit, was acquired from the City of Albany through a joint effort of the California State Parks and the East Bay Regional Park District in 1998. The EBRPD possesses a long-term lease for the operation and maintenance of the project site for park uses from California State Parks.

The Commission finds that the project is consistent with the McAteer-Petris Act and the Bay Plan policies on fill.

- C. **Shoreline Protection.** The Bay Plan Shoreline Protection Policy 1 states, in part, “[n]ew shoreline protection projects and the maintenance or reconstruction of existing projects and uses should be authorized if: (a) the project is necessary to provide flood or erosion protection for (i) existing development, use or infrastructure, or (ii) proposed development, use or infrastructure that is consistent with other Bay Plan policies; (b) the type of the protective structure is appropriate for the project site, the uses to be protected, and the erosion and flooding conditions at the site; (c) the project is properly engineered to provide erosion control and flood protection for the expected life of the project based on a 100-year flood event that takes future sea level rise into account; (d) the project is properly designed and constructed to prevent significant impediments to physical and visual public access; and (e) the protection is integrated with current or planned adjacent shoreline protection measures.” Additionally, Shoreline Protection Policy 2 states, in part: “Riprap revetments, the most common shoreline protective structure, should be constructed of properly sized and placed material that meet sound engineering criteria....”

The project, which is the subject of the original permit, involves removing un-engineered fill along the shoreline and placing approximately 2,100 cubic yards of solid fill covering approximately 15,769 square feet of Bay surface area to create an engineered rock revetment. The elevation of the existing revetment averages in height from 9 feet to 15 feet NAVD88 with average elevations occurring at 12.5 to 14 feet NAVD88. Along the

length of the “Neck” the Bay Trail spur is located at 13 feet NAVD88. The 100-year flood elevation at MHHW for the site is currently 9.2 feet NAVD88. Table 2 below lists the sea level rise projections for the site through 2100.

Sea Level Rise Projections

Year	Future Sea Level Rise (NAVD88)	Project Tidal Elevation (NAVD88)
2015	-	9.2 feet
2050	12” (1 foot)	10.2 feet
2070	19” (1.6 feet)	10.8 feet
2100	36” (3 feet)	12.2 feet

The revetment will be constructed to an elevation of 12 feet NAVD88 with a 1.5 to 1 slope. To construct the revetment, the existing concrete rubble revetment will be removed and the revetment toe will be created in a trench excavated to a depth of three feet into the Bay bottom. All debris excavated from the site will be transported to an upland portion of the site for sorting and handling. During the handling and sorting process, contractors will determine whether the rubble can be reused during the construction of the replacement revetment. It is estimated that only a small fraction of the removed rubble will be usable in the new revetment, which will be constructed primarily of imported rock. The replacement revetment will be constructed by placing a geotextile blanket over the shoreline once the rubble has been removed and grading the exposed shoreline to create a smooth slope. Then a bedding stone material composed of 1- to 6-inch crushed rock will be placed on top of the geotextile blanket, providing a firm surface for the protective rock/armor stone. The two- to three-foot armor stone rock, will be placed on top of the crushed rock, providing the armor to protect all the elements of the replacement revetment. All materials and the revetment design are consistent with standardized procedures used in San Francisco Bay.

The permittee collaborated with the RWQCB and the U.S. Army Corps of Engineers to develop an optimal design for the shoreline revetment with the goals of containing the landfill debris while minimizing disturbance of the material and withstanding rising sea levels. The permittee’s consultant, Coast and Harbor Engineering, Inc., performed a coastal engineering analysis for the project site that included an evaluation of rising sea levels, winds, wave runup and overtopping. The analysis concluded that at current sea level, some overtopping of the revetment could occur under the “most extreme” conditions as a result of wave runup and storm surge. Nonetheless, they concluded that utilizing a higher revetment crest elevation “was not practicable,” and that the effects of wave runup and overtopping should “be considered in the design of the upland features....” The permittee states that the reconstructed revetment has been designed to withstand occasional overtopping and contains the appropriate drainage to ensure that it will not be undermined during on overtopping event. The revetment could be adapted

for sea level rise beyond 2050 by further extending rock rip rap into the 30-foot-wide vegetated strip and raising the elevation of the Bay Trail spur (currently at 13 feet NAVD88).

The Commission finds that the revetment has been designed to withstand current and projected (2050) tidal flows, can be adapted to provide shoreline protection into the future, and has been designed based on sound engineering criteria, and is thus, consistent with the Bay Plan policies on Shoreline Protection.

- D. **Public Access and Views.** Section 66602 of the McAteer-Petris Act provides, in part, “existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” The Bay Plan Public Access Policy 1 states, in part: “[a] proposed fill project should increase public access to the Bay to the maximum extent feasible....” Policy 4 states, “[p]ublic access should be sited, designed and managed to prevent significant adverse effects on wildlife. To the extent necessary to understand the potential effects of public access on wildlife, information on the species and habitats of a proposed project site should be provided, and the likely human use of the access area analyzed.... Siting, design and management strategies should be employed to avoid or minimize adverse effects on wildlife, informed by the advisory principles in the Public Access Design Guidelines.... Where appropriate, effects of public access on wildlife should be monitored over time to determine whether revisions of management strategies are needed....” Policy 5 states, in part “[p]ublic access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” Policy 7 states, in part “[p]ublic access improvements...should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” Lastly, the Bay Plan Appearance, Design and Scenic Views Policy 2 states, in part “[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay.”

Currently two parallel pathways extend along the “Neck” within former road alignments that were used to access past landfill operations on the “Bulb”. Both trails run from Buchannan Street, to the east, to the “Bulb”, to the west. The trails are of varying widths, ranging from 25 to 30 feet, are not ADA-accessible, and contain low spots that pond with water. The areas adjacent to the trails are highly disturbed with widespread, invasive plants that block views to the Bay. The trails are popular destinations for a variety of public access users (e.g., walking, jogging, bicycling, dog walking, and kite and wind surfing) and provide excellent wildlife viewing opportunities.

The purpose of the project, which is the subject of the original permit, is to prevent continued erosion of a shoreline park, protect Bay water quality by preventing exposure of the debris that is the foundation material of the park to Bay water, protect the park from rising sea levels, and enhance public access and habitat values. Public access provided with the project consists of relocating the lower trail approximately 5 feet to

the north (away from the Bay) to provide space for a 25-30-foot-wide planting area that will be located along the southern shoreline adjacent to the trail. The trail will be constructed in compliance with ADA-requirements and will have a consistent width of 14- to 16-feet. The trail will be graded to provide a level and smooth pathway and surfaced with a surfacing material that is durable and can withstand environmental conditions at the site to provide a more consistent surface. The planting area will be hydroseeded with a mix of native plant species (e.g., marsh gumplant, California poppy, blue-eyed grass, etc.) and the vegetation will be maintained and managed to assure that its height will not interfere with views to the Bay from the trail. In addition, a six-foot-wide, 44-foot-long connector trail will be constructed at the eastern end of the reconstructed spur trail that will connect Albany Beach to this Bay Trail spur. The extension will also be ADA-accessible.

The area to be planted will make the shoreline trail more attractive, will provide a buffer between trail users and the new Bay habitat features, and will provide upland habitat that may attract wildlife, thereby enhancing the experience of trail users. The permittee states that the vegetation that will be located in the planting area will be strategically located to visually screen the trail from the habitat. Special Condition II-~~CE~~ requires the permittee to monitor the new and existing habitats to assess whether public access use of the trail is negatively affecting wildlife use of the area. If it is determined that further strategies are needed to buffer public access and wildlife use, the permittee will implement additional measures (e.g., post and cable fencing, etc.), after receiving any required Commission authorization.

As discussed above, the trail will be located at 13 feet NAVD88. Sea level rise projections for the site (100-year flood elevations of 10.2 feet NAVD88 by 2050 and 12.2 feet NAVD88 by 2100) are below the trail elevation, but storm surge and wave run up could occasionally inundate the trail. While trail has been designed to withstand some flooding, it is likely that it will need to be repaired, raised, modified, or relocated, depending on the effects of sea level rise over time. Special Condition II-~~CB~~-6 has been included in this authorization and requires the permittee to implement strategies to ensure that the public access required herein is resilient to rising sea levels and is maintained and repaired after possible damage caused by sea level rise.

The Commission finds that the public access provided with the project is the maximum feasible consistent with the project and, as conditioned, is consistent with the Bay Plan policies on public access.

- E. **Natural Resources.** The San Francisco Bay Plan policies on “Fish, Other Aquatic Organisms and Wildlife” state, in part, that [t]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay’s tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased...”; and “[t]he Commission should give appropriate consideration to the recommendations of the California Department of Fish and Game, the National Marine Fisheries Service or the U.S. Fish and Wildlife Service in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat...”.

The Bay Plan policies on Tidal Flats and Tidal Marshes state, in part, that “[a]ny proposed filling...should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects....” The Bay Plan Subtidal Areas Policy 3 states, in part, that “[s]ubtidal restoration projects should be designed to (a) promote an abundance and diversity of fish, other aquatic organisms, and wildlife; (b) restore rare subtidal areas; (c) establish linkages between deep and shallow water and tidal and subtidal habitat in an effort to maximize habitat values for fish, other aquatic organisms and wildlife; and (d) expand open water areas in an effort to make the Bay larger....”

The land-side portion of the site is a highly-disturbed former landfill made up largely of construction debris. There are no known occurrences of special-status terrestrial species. The permittee contacted the U.S. Fish and Wildlife Service several times during development of the project, and, due to the disturbed nature of the site, the U.S. Army Corps of Engineers determined that consultation with the USFWS was not required.

The Bay waters offshore of the site are known to contain the following special-status species and the habitat(s) used by these species: Sacramento River winter-run and Central Valley spring-run Chinook salmon, central California coast and California central valley steelhead and the north American green sturgeon, southern Distinct Population Segment. The Bay waters offshore of the park contain Essential Fish Habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act. The permittee received concurrence from NOAA Fisheries that the project will not have an adverse effect on special-status fish species, their critical habitat or essential fish habitat (EFH). NOAA Fisheries’ concurrence letter, dated February 4, 2014, states that additional conservation measures were not required as the project will implement several avoidance and minimization measures to reduce potential impacts to special-status resources including the use of construction booms and silt curtains during construction, limiting construction to times outside the migration period of special-status salmonids, and performing all in-water construction activities at low tide. The concurrence letter concluded that post-construction the project site “will be restored to a condition of greater aquatic habitat diversity” than currently exists and that the project is “anticipated to result in significant benefits to designated critical habitat in the action area through the expansion of intertidal habitat, increased habitat complexity and increased foraging opportunities for listed fish....”

Special Condition II-EF has been included in ~~this~~ the original authorization to ensure that potential effects of the project on Bay resources are minimized. This special condition requires the use of construction booms to contain construction debris, prohibits in-water work to periods outside the migration period of special-status salmonid species and requires that all in-water work be conducted at low tide. In addition, this special condition requires that specific measures be implemented to reduce potential impacts to eelgrass found at the project site.

Finally, the roosting islands, pebble beach, groin, and oyster reef will all be inundated under current 100-year flood conditions and will be inundated at an increasingly frequent rate with future rising sea levels. The permittee states that the habitat features were designed to provide habitat under “current ecological conditions.” The permittee states that the habitat features will evolve with rising sea levels. For example, while the bird roosting islands will “gradually shrink and become subtidal” the oyster shell area and reef will “will flatten to an interlocked armored surface and will accumulate silts that will further aid in inter-bedding the shell substrate increasing its resistance to movement from wave surge....” In addition, the permittee states that the pebble beach and the oyster reef will “accrete sediment and shell materials and may have a more extended life...” because of the addition of these naturally present materials. Thus, it is expected that while the habitat features will initially adapt to sea level rise, some features may be lost (such as the bird islands), but others may persist and change (the pebble beach and oyster reef) with rising Bay waters.

The Commission finds that the project, as conditioned, is consistent with the Bay Plan policies on Natural Resources.

- F. **Water Quality.** The Bay Plan policies on Water Quality state, in part, that “[b]ay water pollution should be prevented to the greatest extent feasible...” and that “[t]he policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Board should be the basis for carrying out the Commission’s water quality responsibilities....”

As discussed above, the site was a former landfill that was closed in 1998. Remediation of the landfill materials is subject to Regional Water Quality Control Board (RWQCB) Order No. 98-072. The existing revetment is eroding, exposing the landfill materials to tidal action. The permittee has worked with the RWQCB to develop a replacement revetment that will contain the landfill debris and minimize disturbance of landfill materials. On May 7, 2014, the RWQCB issued approval of the project under RWQCB Certification No. 02-01-C1154. The RWQCB approval requires that several measures be employed to minimize effects to water quality including the removal of all construction debris, the preparation and approval of a Storm Water Pollution and Prevention Plan (SWPPP), use of silt fences, construction booms and straw wattles during construction, daily checking of construction equipment for leaks, providing environmental education to construction personnel and presence of a biological monitor on-site during construction activities. In addition, the RWQCB approval requires that the revetment and habitat features be monitored for a minimum of five years following construction to ensure that the structures are stable and provide the anticipated habitat benefits, respectively. Special Condition II-FG has been included in this authorization to ensure that potential effects to Bay water quality are minimized.

The Commission finds that the project, as conditioned, is consistent with the Bay Plan policies on Water Quality.

G. Material Amendment No. One. The subject park improvement project is located in the Commission's 100-foot shoreline band jurisdiction and a designated priority use area:

- 1. Priority Use Area.** The project site is located within an area designated for Waterfront Park, Beach Priority Use in Bay Plan Map No. 4 which, further, provides that projects in this area should "[p]rotect and provide public access to shellfish areas offshore." According to the permittee, the project goals are to provide public shoreline access between Buchanan and Gilman Streets and enhance the Albany Beach park, including non-tidal habitat at the site.

The project site is located within the McLaughlin Eastshore State Park, which is operated by the EBRPD. The beach at the site is owned by the State of California, which has designated EBRPD to manage the beach and park area. EBRPD is attempting to acquire a 2.88-acre parcel located east of the beach from its neighbor, Golden Gate Fields, part of which would be affected by the subject project. If EBRPD does not acquire the parcel through this mechanism, the project would need to be redesigned and this permit would need to be further amended. EBRPD holds an easement from Golden Gate Fields that is approximately 30 feet-wide along the shoreline, extending from the 2.88-acre parcel, referenced above, to the south terminating at Gilman Street.

The park is popular with pedestrians (especially people with dogs), bicyclists, kite surfers, kayakers, sunbathers, picnickers, and anglers. The main park entrance is located at the terminus of Buchanan Street. Free vehicle parking is available along Buchanan Street (43 spaces) while fee parking is allowed at an adjacent Golden Gate Fields lot. The San Francisco Bay Trail extends along Buchanan Street to the park. South of the park and the Golden Gate Fields property, the Bay Trail extends along West Frontage Road south of the intersection with Gilman Street. At the park shoreline, between Buchanan and Gilman Streets, no formal public trail exists and, at the southern end of the property (west of Golden Gate Fields), the public informally accesses the shoreline through the privately-owned Golden Gate Fields area. In the vicinity of Fleming Point, which is the approximate mid-point of the proposed trail alignment, the topography terminates in a steep highpoint making this area inaccessible to most visitors.

The project site beach area is a designated San Francisco Bay Water Trail (Water Trail). Kite surfers and kayakers set-up recreational equipment at the parking lot owned by Golden Gate Fields. The lot provides an easy launch site and is conveniently located near the Bay.

In its current condition, the beach is not universally-accessible, and does not have fencing to enclose existing non-tidal habitat areas. Two peninsulas located south of the beach are used informally, albeit frequently for fishing. There is a eucalyptus grove at the northern end of the beach area that provides wind protection. A portable toilet is located at the terminus of Buchanan Street. Seating is located along

Buchanan Street and the public trail on the Albany Neck. Public art exists at the Albany Bulb, Neck, and Beach, including a wooden throne at the beach which would likely remain in place. No potable water is available at the site.

The project will result in new or improved area measuring approximately 68,682 square feet (1.58 acres) and an approximately 124,718 square feet (2.86 acres) unimproved area located within the Commission's 100-foot shoreline band jurisdiction, and new or improved area measuring approximately 136,200 square feet (3.13 acres) located outside of the Commission's jurisdiction. These areas are required to be maintained and made available for public access in Special Condition II.D.

Through implementation of the subject project authorized herein, the EBRPD will redesign the main entry to the park and more minor entries to the beach. Additionally, a 20-vehicle parking lot will be constructed to supplement the 43-vehicle public parking spaces along Buchanan Street. The parking area at Golden Gate Fields will continue to operate but, on days when the track is open, a parking fee will continue to be charged. The EBRPD parking lot and the Golden Gate Fields parking will be separated and distinct but allow park visitors to move between the two areas. A gate will be placed at the entrance to the EBRPD parking lot. Special Condition II.D.4 requires the permittee to keep the parking lot gate generally open to allow public use of the site.

A 4,983-foot-long section of the Bay Trail located between Buchanan and Gilman Street will be constructed. The beach will be expanded in area and also improved for all users, including those with disabilities. Sand dune, seasonal wetland, and other vegetated areas (totaling 1.1 acres) will be improved to provide foraging and nesting habitat for birds, yet closed (with fencing) to general access. Public views toward the Bay through these habitat areas will not be blocked. Special Condition II.D.6 has been included to ensure that fencing materials, including at the 1.1-acre habitat area, will not be opaque.

An open use area will be constructed with space for all users, including board sailors. Two picnic tables will be provided near the north beach entrance. A beach entrance will be enhanced at the northern end of the beach and a second beach entrance with a seat wall, interpretive signage, and bicycle racks will be added at the southern end of the beach and will connect to the Bay trail and the parking lot. Universally-accessible mats will be placed to make the beach barrier-free. Access will continue to the fishing peninsulas. Special Condition II.D.3 has been included to ensure that the improvements are maintained in a safe and usable area.

As conditioned, the Commission finds that the project is consistent with the Bay Plan Waterfront Park, Beach priority use designation.

2. **Public Access.** In assessing whether a project would provide maximum feasible public access consistent with the other elements of an authorized project, the Commission relies on, among other things, the McAteer-Petris Act, the Bay Plan policies, and access requirements of previously-permitted projects of a similar scope and nature.

Section 66602 of the McAteer-Petris Act states, in part, that “...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.”

The Bay Plan **Public Access** policies state, in part, that projects “should increase public access to the Bay to the maximum extent feasible.” Further, the policies state, in part, that “[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare;” that “diverse and interesting public access experiences should be provided.” Additionally, the policies state, in part, that public access “should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” The policies state that “[p]ublic access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” Further, the policies state, in part, that “[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby” and that “[t]he Design Review Board should advise the Commission regarding the adequacy of the public access proposed.”

The Bay Plan **Recreation** policies state, in part, that “[d]iverse and accessible water-oriented recreational facilities...should be provided” and that “sandy beaches should be preserved...for recreational use....” Further, the policies state that waterfront parks “should emphasize hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities” and that “[s]ites, features or facilities within designated waterfront parks that provide optimal conditions for specific water-oriented recreational uses should be preserved and, where appropriate, enhanced for those uses...” Additionally, “[p]ublic parking should be provided in a manner that does not diminish the park-like character of the site.” Regarding non-motorized boats, the policies state, in part, that “[w]here practicable, access facilities for non-motorized small boats should be incorporated into waterfront parks.” To enhance this use, such areas should include “...launching facilities, restrooms, rigging areas, equipment storage....[and] be accessible...to ensure that boaters can easily launch their watercraft.”

- a. **Maximum Feasible Public Access.** The project as authorized herein will improve a public park and associated facilities to be operated and maintained by the EBRPD. The project includes the construction of a 0.94-mile section of the Bay Trail thereby closing a significant gap in the regional trail network. In total, the improvements will affect an approximately 7.57-acre area. Within the Commission's 100-foot shoreline band jurisdiction, the project will affect a 4.44-acre area. Within the Commission's 100-foot shoreline band jurisdiction, the project involves the removal of a parking area to create space for a beach expansion, the creation of non-tidal fenced habitat areas, the development of an open use area for visitors, and the installation of various amenities and infrastructure, including shoreline protection, universally-accessible beach mats, and signage. Special Condition II.C.1. requires the total project area, including areas outside of the Commission's jurisdiction, to be provided as public access.

An approximately 0.94-mile Bay Trail segment will be constructed with two view overlooks and a 200-foot-long bridge element along a steep—and otherwise inaccessible—area of the site. In certain sections, the trail will include safety railings. The public will access the trail primarily from the park area at the terminus of Buchanan Street and from Gilman Street, but will not access it from the Golden Gate Fields property. Where the Bay Trail will be constructed east of the beach, the EBRPD needs to acquire the property from Golden Gate Fields. Appendix F of the Regulations allows the commitment and authority to acquire a property through eminent domain to provide as valid property interest. Special Condition II.D.7 requires the permittee to apply for an amendment to this permit if EBRPD is unable to acquire the parcel to ensure that continuous access along the shoreline is provided.

The 4,150-foot-long section of Bay Trail to be constructed south of the beach area extending to Gilman Street will be built on land owned by Golden Gate Fields to which the EBRPD holds an easement allowing such development to occur. A 2,683-linear-foot (0.51-mile) section of the Bay Trail may need to be relocated at a future date if redevelopment of the adjacent Golden Gate Fields occurs and necessitates such a trail realignment and relocation. Special Condition II.D.7 requires the EBRPD to submit an amendment request 180 days prior to any planned commencement of construction of the realignment to ensure that the trail is continuous.

Outside of the Commission's jurisdiction, the project involves the development or improvement of vehicle and bicycle parking facilities, Bay Trail improvements, a restroom, seating areas, spur trails, and non-tidal habitat sites.

According to the EBRPD, the daily number of park visitors is estimated to increase by about 180 people (most arriving by bicycle), representing approximately 25% increase over current use. The project is designed to accommodate these visitors and meet the needs of existing and anticipated site users. However, the improvements will result in various users crossing shared

access areas resulting in potential user conflicts and/or unsafe conditions. Special Condition II.D.5 requires the installation of signage to manage and minimize user conflicts.

- b. **Sea Level Rise and Flooding.** The project authorized in Material Amendment No. One does not involve Bay fill and is not characterized as a “larger” shoreline project per the Bay Plan policies on climate change. It should be noted, however, that the Bay Plan climate change policies state, in part, that certain projects, such as public parks, “should be encouraged” even in areas where future flooding is likely a risk because the regional benefit of such projects outweighs flooding risks at this time.

According to EBRPD, all improvements authorized herein were designed with a project life of 25 years or through 2045 with the exception of those sections of the Bay Trail at Fleming Point that are built with retaining walls and including the 200-foot-long bridge with a design life of 50 years or through 2070.

Current mean higher high-water elevation at the project site is 6.2 (NAVD88.) The Federal Emergency Management Agency’s (FEMA) 100-year flood elevation at the site is 9.2 feet (NAVD88). Considering a 16-inch sea level rise by 2050, the 100-year flood elevation at the site will be 10.53 feet (NAVD88); at the improved beach area, elevated at or below 9 feet (NAVD88), the anticipated mean higher high-water elevation by 2050 (inclusive of a 16-inch rise in sea level) will be 7.5 feet (NAVD88). The expanded beach area at the south of the beach would be elevated between 9 feet and 11 feet (NAVD88).

A 2,300-foot-long section of the Bay Trail will be built at an elevation of 12 feet (NAVD88), above the level at which flooding is expected by 2050. The 1,763-foot-long section of Bay Trail from the Jockey Lot to Gilman Street will be constructed of varying elevations: 10.4 feet and 12 feet (NAVD88). The lower laying portions along this length of the shoreline will be flooded during a 50-year storm event by year 2050 (elevation 9.35 feet NAVD88).

The built elevation of a 920-foot-long section of the Bay Trail, between the southern end of the beach and the fishing peninsula at Fleming Point, will be 9 feet (NAVD88). This section will be flooded by a 50-year storm event (elevation 9.34 feet NAVD88) currently and a 2-year storm event by year 2050 (elevation 7.75 feet NAVD88). The improved beach area will be elevated to approximately 9 feet (NAVD88) and, by 2050, will be flooded on a daily basis. The lower elevated portions of expanded beach would be flooded during a current 50-year storm event (flood elevation 9.34 feet NAVD88) and would be flooded by a 2-year storm event in 2050 (flood elevation 7.75 feet NAVD88). The entire expanded beach area would be flooded by a 100-year storm event in 2050.

The permittee is required, pursuant to Special Condition II.D.3, to submit annual maintenance reports to inform the Commission on the maintenance activities undertaken at the site and flooding events experienced, outlining the areas flooded and the duration of flooding and trail closures. This condition also requires the open use area to be maintained in a manner that would continue to facilitate the use of the area.

Special Condition II.D.8 requires the permittee to develop an adaptation plan after the improvements have been installed for a 10-year period to ensure that the public access is managed to avoid adverse affects from flooding and sea level rise. It also requires the permittee to install a minimum of two (2) signs communicating to the public how to report flooding events to the Commission.

Special Condition II.H is included to ensure that the shoreline revetment is installed and maintained in a manner that protects the shoreline from erosion and does not impact the Bay. Special Condition II.I has been included to ensure that all temporary structures are removed in a timely manner following the completion of construction.

As conditioned, the Commission finds that the project is consistent with the Bay Plan policies on public access and recreation and is consistent with the provisions of the McAteer-Petris Act on public access.

GH. Engineering Criteria Review Board. The staff determined that the original project and the project subject to Material Amendment No. One did not raise seismic issues. For this reason, input from the Commission's Engineering Criteria Review Board was not sought.

HI. Design Review Board. The Design Review Board did not review the original project because the public access required largely involves the reconstruction of an existing trail, essentially in the same location of an existing trail, and therefore, did not raise design issues.

Material Amendment No. One. At the Commission's Design Review Board (Board) meeting of April 17, 2017, an earlier version of the project was reviewed and the public expressed concerns about the following issues: potential trail and water access conflicts amongst bicyclists, pedestrians, kayakers and kite surfers; the scope and location of paving material particularly within the parking area; the location of the proposed vehicle parking lot; and the limited space available to kite surfers for kite layout and water access.

The Board asked EBRPD to work with the kite surfing and kayaking community to ensure implementation of a safe and functional park design for all users. The Board also asked EBRPD to reconsider motorized and non-motorized circulation at the site. The Board suggested redesigning the Buchanan Street entry to improve the "sense of arrival" at the park. The Board had concerns about the fencing at the proposed improved (non-tidal) habitat areas on the beach. Following the DRB meeting, the EBRPD and City of Albany representatives held a variety of public meetings to refine the project and meet the needs of the various park user groups.

At its June 5, 2017 meeting, the Board reviewed a revised design with a smaller and relocated vehicle parking and turnaround area, and an open use area for kite surfers and others. The Board expressed concerns about landscaping of the open use area and lack of irrigation within the open use area. The Board supported the revised design particularly due to the smaller paved area but it had residual concerns about the modified parking lot design. The Board stated that public access to the areas located bayward of the proposed Bay Trail alignment, particularly at the two fishing peninsulas, should be ensured. The Board recommended EBPRD's consideration of a defined unloading area and extended parking hours for kayakers. The Board recommended the use of markings and signs to alert users of potential cross-traffic concerns especially for pedestrians, bicyclists, and non-motorized boat users. Lastly, the Board stated that a sea level rise adaptation plan should be provided by EBPRD to address vulnerable, low-lying portions of the proposed Bay Trail.

In response, the permittee stated they will develop a management plan for maintenance of landscaping within the open use area. They also incorporated a sloped edge at the bayward side of the Bay Trail to facilitate public access to the two fishing peninsulas, enhanced the unloading areas at the parking lot, removed parking hour limits for vehicles, and developed signage to install at high traffic conflict areas at the site.

- JJ. **Environmental Review.** On November 21, 2012, the East Bay Regional Park District certified to Final Environmental Impact Report for the ~~proposed~~ original project and for Phases 2 and 3.

As such, Commission finds, declares, and certifies that, as conditioned herein, the project authorized is consistent with the *San Francisco Bay Plan*, the McAteer-Petris Act, the California Environmental Quality Act, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone.

- JK. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.
- KL. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the *San Francisco Bay Plan*, the McAteer-Petris Act, the California Environmental Quality Act, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

- A. **Permit Execution.** This amended permit shall not take effect unless the permittee executes the original of this permit and return it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

- B. **Certification of Contractor Review.** Prior to commencing construction authorized herein, the general contractor or contractors in charge of such work within the Commission's jurisdiction shall submit written certification that s/he has reviewed and understands the requirements of the permit and any final plans subject to BCDC approval.
- C. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- D. **Permit Runs With the Land.** Unless otherwise provided in this amended permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project Consistent with Permit Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this amended permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.
- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the amended permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This amended permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this amended permit does not guarantee that the Commission's jurisdiction will not change in the future.

- J. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or their assignees if the amended permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee or their assignees if the permit has been assigned.
- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittee or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- L. **Permission to Conduct Site Visit.** The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.
- M. **Best Management Practices**
1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
 2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.
- N. **Permit Assignment.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittee or any assignees of this amended permit or any part of it, shall provide the third party with a copy of this permit and shall call their attention to any provisions regarding public access or need to obtain further Commission approval related to any activities authorized herein. No more than ten days after transferring any interest in any property subject to this permit to another party, the transferors shall: (a) notify the Commission of the nature of the transfer, the name,

address, and telephone number of the transferee, and the effective date of the transfer; and (b) shall submit an assignment of this amended permit for the area transferred that has been executed by the transferor and the transferee and that indicates that the transferor has transferred amended the permit as it applies to the property that was transferred and that the transferee has read, understood, and has agreed to be bound by the terms and conditions of this amended permit.

- O. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.